ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2386 OF 2007

Sukli Shamlal Gaud & Gover ...Appellant.

Vs.

B.M.C. ...Respondents.

Mr. S.S. Redekar for the appellant.

Mr. J.J.Xavier for the BMC.

CORAM : ANOOP V. MOHTA,J.

DATED : 15th October, 2007

P.C.

1. The plaintiff being aggrieved by the order dated 15/06/2007 whereby his suit was dismissed on the ground of non-joinder of necessary parties, and therefore, the present appeal.

2. The plaintiff appellant failed to prove that the suit structure i.e. compound wall and five latrines in Survey No. 237 at Appa Pada, Kurar village, Malad (East), Mumbai-400 097 was unauthorized construction and therefore apart from above grant, dismissed the suit of injunction by further observing that the appellant is not entitled for mandatory injunction directing the defendant B.M.C. to initiate and persuade in appropriate action in respect of the unauthorized construction, respondent corporation was

the only party. The respondent corporation is not obligation even otherwise to take action against the unauthorized construction. In the present case, without observing further on this aspect, it is definitely expected that the respondent corporation should take action if there is unauthorized construction. The fact remained here that the necessary party against whom the declaration sought was not made party. Therefore, no relief whatsoever can be granted in the present suit against the said party. Apart from that, as observed the plaintiff failed to prove that the suit in question was unauthorized.

2. However, keeping all points open, I am not inclined to entertain and admit the present appeal. The present appeal is therefore, dismissed as there is no perversity in the order passed by the trial Court. The order is within the framework of law and record.

3. The appeal is, therefore, dismissed.

(ANOOP V. MOHTA, J.)